

Indiana Department of State Revenue

Revenue Ruling #2006-02ST

April 20, 2006

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax – Public Transportation

Authority: IC 6-2.5-5-27, 45 IAC 2.2-5-61

Taxpayer #1 requests the Department to rule whether taxpayer #2's purchase of vehicle leases, repairs, fuel and other tangible personal property directly used in Indiana in its provision of transportation services to taxpayer #1 is exempt from sales/use tax.

STATEMENT OF FACTS

Taxpayer #1 is a retailer. It currently sells and delivers its product using company-leased trucks and employee drivers. For business reasons taxpayer #1 is considering a transfer of its transportation operations to a for-profit, wholly-owned limited liability company ("taxpayer #2") that will operate as a for-hire transportation company. All leases currently in the name of taxpayer #1 would be re-executed in taxpayer #2's name. Taxpayer #2 would obtain proper operating authorities with state and federal government to provide transportation services. Taxpayer #2 would charge taxpayer #1 and/or other clients an arms length rate for transportation services and other administrative services, on a periodic basis as agreed to by both parties. Drivers would remain with the taxpayer #1 and be leased to taxpayer #2. Taxpayer #2 will maintain a separate bank account and accounting system.

DISCUSSION

IC 6-2.5-5-27 provides:

"Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property."

45 IAC 2.2-5-61(b), interpreting IC 6-2.5-5-27, states:

Public transportation shall mean and include the movement, transportation or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers, performing public transportation service for compensation by highway, rail, air or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the Public Service Commission of Indiana, the Interstate Commerce Commission, the Aeronautics Commission of Indiana, the U.S. Civil Aeronautics Board, the U.S. Department of Transportation, or the Federal Maritime Commissioner; however, the fact that a company possesses a permit or authority issued by the P.S.C.I., I.C.C., etc, does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the transportation of persons or property for consideration as defined above.

It is clear then, for a taxpayer to qualify for the public transportation exemption the taxpayer must transport non-owned property for consideration (“consideration” is defined as reasonable charges compared with industry standards) and be operating under the proper governmental authority if so required. From the information submitted by taxpayer #1, taxpayer #2 satisfies the above requirements for the public transportation exemption.

RULING

The Department rules taxpayer #2’s purchase of vehicle leases, repairs, fuel and other tangible personal property directly used in Indiana in its provision of transportation services to taxpayer #1 is exempt from sales/use tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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